

[First Reprint]

SENATE, No. 2112

STATE OF NEW JERSEY
216th LEGISLATURE

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Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

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SYNOPSIS

Authorizes prescribed burning in certain circumstances.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on September 15, 2014, with amendments.



(Sponsorship Updated As Of: 9/25/2015)

1 AN ACT concerning prescribed burns, and supplementing Title 13
2 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known, and may be cited, as the
8 "Prescribed Burn Act."

9
10 2. The Legislature finds and declares that prescribed burning is
11 a public safety tool the primary purpose of which is to reduce the
12 danger of uncontrolled wildfire; that it is also a resource protection
13 and land management technique which benefits forests and other
14 natural resources, the environment, and the economy of the State;
15 that prescribed burning reduces naturally occurring vegetative fuels
16 within forested areas and other types of ecosystems, and thereby
17 lessens the risk and severity of major wildfire and the possible
18 resulting loss of life and property; that New Jersey's changing
19 population places urban and suburban development directly
20 adjacent to fire-prone lands; and that the use of prescribed fire to
21 manage vegetative fuels in those interface areas would substantially
22 reduce the threat of damaging wildfire in urban and suburban
23 communities.

24 The Legislature further finds and declares that forested land,
25 agricultural land, grassland, coastal marshland, and other open
26 lands constitute significant economic, biological, and aesthetic
27 resources of Statewide importance; that the ecology of the Pine
28 Barrens region in particular requires periodic fire for maintenance
29 of ecological integrity; that proper prescribed burning on those
30 lands serves to reduce hazardous accumulations of vegetative fuels,
31 prepares sites for both natural and artificial forest regeneration,
32 improves wildlife habitat, controls insects and disease, and
33 perpetuates fire dependent ecosystems; and that proper application
34 of prescribed burning is essential to the existence, continuation,
35 restoration, and management of many plant and animal
36 communities, and the resulting increase in vegetative growth and
37 yield benefits rare, threatened, and endangered species, songbirds,
38 and other game and nongame species.

39 The Legislature also finds and declares that as New Jersey's
40 population continues to grow, pressures from liability issues and
41 smoke nuisance complaints cause prescribed burn practitioners to
42 limit prescribed burn activity, thereby reducing the above described
43 benefits of these burns to the State; and that public
44 misunderstanding of the benefits of prescribed burning to the
45 ecological and economic welfare of the State inhibits full use of this

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted September 15, 2014.

1 valuable resource management tool.

2 The Legislature therefore determines that it is the purpose of this
3 act to authorize and promote the continued use of prescribed
4 burning for public safety, wildfire control, ecological, silvicultural,
5 agricultural, and natural resource management purposes; that it is
6 appropriate and useful to exempt prescribed burning, as authorized
7 by this act, from other State and local laws and regulations
8 prohibiting open burning or the burning of forests and other types
9 of ecosystems; and that prescribed burning of forest fuels is to be
10 considered a property right of a landowner.

11

12 3. As used in this act:

13 "Bureau of Forest Fire Management" means the Bureau of Forest
14 Fire Management in the Department of Environmental Protection.

15 "Certified prescribed burn manager" means a person who has
16 been certified pursuant to section 4 of this act to conduct prescribed
17 burns.

18 "Department" means the Department of Environmental
19 Protection."

20 "Forest fuel" means naturally occurring vegetative material
21 found in forests, fields, grasslands, coastal marshlands, and other
22 open lands.

23 "Landowner or lessee" means (1) the person responsible for the
24 land upon which a prescribed burn is to be performed who (a) either
25 owns or leases the land, and (b) has full access and control of the
26 land at all times during the prescribed burn; or (2) an employee or
27 other representative of that person who, for the purposes of
28 complying with this act, (a) is authorized to act on the person's
29 behalf, and (b) has full access and control of the land at all times
30 during the prescribed burn.

31 "Person" means an individual, trust, partnership, limited
32 partnership, limited liability company, society, association, joint
33 stock company, corporation, public corporation or public authority,
34 estate, receiver, trustee, assignee, referee, fiduciary and any other
35 legal entity.

36 "Prescribed burn" or "prescribed burning" means the controlled
37 application of fire to forest fuels for public safety, wildfire control,
38 ecological, silvicultural, agricultural, or natural resource
39 management purposes, under specified environmental conditions
40 and by following appropriate precautionary measures which cause
41 the fire to be confined to a predetermined area, so as to accomplish
42 planned land management objectives.

43 "Prescribed burn plan" or "plan" means a written plan prepared
44 in accordance with this act for starting, executing, and controlling a
45 prescribed burn.

46 "State Firewarden" means the State Firewarden designated as
47 such pursuant to R.S.13:9-7.

1 ¹["State Forester" means the State Forester designated as such
2 pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17).]¹

3
4 4. a. The department shall develop and administer a program
5 for the certification of prescribed burn managers. The program
6 shall include at least the following subjects: safety; legal aspects of
7 prescribed burning; fire behavior; prescribed burning tactics; smoke
8 management; environmental effects; and preparation of prescribed
9 burn plans. The department shall establish the period for which a
10 certification issued pursuant to this section shall be valid and the
11 conditions and requirements for recertification under the program.

12 b. The department may charge a reasonable fee to cover the
13 costs associated with the program. All such fees collected shall be
14 credited to a special dedicated account in the General Fund and
15 appropriated to the department to help pay for the administration
16 and operation of its forest fire programs.

17 c. No person who desires to conduct a prescribed burn only on
18 land for which the person is the landowner or lessee shall be
19 required to become certified as a prescribed burn manager pursuant
20 to this section.

21 d. The department, upon issuance of a written notice and after
22 affording the opportunity for a hearing, may revoke a certification
23 issued pursuant to this section if the certified prescribed burn
24 manager or the prescribed burn violates any provision of this act, an
25 approved prescribed burn plan, the "Air Pollution Control Act
26 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or any other State air
27 pollution control law, or any rule or regulation adopted by the
28 department pursuant thereto, or otherwise threatens the public
29 health or safety. The department, for any of those same causes,
30 may immediately suspend a certification until such time as a
31 revocation proceeding may be held and a decision rendered.

32
33 5. a. A prescribed burn shall not be conducted on any land
34 unless:

35 (1) a prescribed burn plan prepared in accordance with this act
36 by a certified prescribed burn manager or the landowner or lessee
37 has been filed with and approved by the department, or the
38 department's designee, prior to the burn;

39 (2) a copy of the prescribed burn plan is retained at the site
40 throughout the period of the prescribed burn;

41 (3) an authorization to burn is obtained from the department, or
42 the department's designee, prior to starting the prescribed burn, and
43 the certified prescribed burn manager or the landowner or lessee
44 ensures that the burn is conducted in accordance with the prescribed
45 burn plan and that sufficient personnel and fire control equipment
46 are present throughout the period of the prescribed burn;

47 (4) the fees which may be assessed by the department for the
48 review and approval of the prescribed burn plan pursuant to

1 paragraph (1) of this subsection and for the issuance of the
2 authorization pursuant to paragraph (3) of this subsection have been
3 paid in full;

4 (5) the appropriate notice has been issued in accordance with
5 section 6 of this act and any rules or regulations adopted pursuant
6 thereto concerning prescribed burns performed by the Bureau of
7 Forest Fire Management; ¹~~and~~¹

8 (6) ¹the landowner or lessee of any land within 250 feet of the
9 area to be burned has been provided prior written notice by certified
10 mail, return receipt requested, or by personal service, of the land to
11 be included in the proposed prescribed burn, the 90-day timeframe
12 in which the proposed prescribed burn will occur, and information
13 regarding how a copy of the approved prescribed burn plan may be
14 obtained, which notice shall be sent at least 30 days prior to the
15 burn; and

16 ¹(7) the nearest regional office of the Bureau of Forest Fire
17 Management responsible for the burn site, and the local fire
18 dispatch center, have been notified of the prescribed burn within 24
19 hours prior to starting it.

20 b. A prescribed burn plan shall include at least the following:

21 (1) the landowner's or lessee's name, address, and telephone
22 number and any other appropriate contact information, including
23 the name, address, and telephone number of the certified prescribed
24 burn manager if applicable;

25 (2) the geographic location of the prescribed burn;

26 (3) the approximate number of acres to be burned;

27 (4) provisions for notifying the public of the prescribed burn in
28 accordance with the requirements of section 6 of this act and any
29 rules or regulations adopted pursuant thereto concerning prescribed
30 burns performed by the Bureau of Forest Fire Management; and

31 (5) such other provisions as the department may deem necessary
32 or appropriate.

33 c. The department shall approve a properly prepared and filed
34 prescribed burn plan unless the department determines that the plan
35 presents an unreasonable risk of (1) uncontrolled wildfire, or (2)
36 harm to public health or safety.

37 d. The department may issue an authorization to burn pursuant
38 to paragraph (3) of subsection a. of this section that is valid for an
39 entire season or for such other period as the department deems
40 appropriate.

41 e. The department may charge reasonable fees to review a filed
42 prescribed burn plan and to issue an authorization to burn. All such
43 fees collected shall be credited to a special dedicated account in the
44 General Fund and appropriated to the department to help pay for the
45 administration and operation of its forest fire programs.

46

47 6. a. The Bureau of Forest Fire Management may perform a
48 prescribed burn or mechanically replicate a burn in any area of land

1 within the State which is determined by the Bureau of Forest Fire
2 Management, or the bureau's designee, to be in reasonable danger
3 of wildfire, provided that, for lands not owned or controlled by the
4 State, the Bureau of Forest Fire Management:

5 (1) describes the areas that will be prescribe burned to the
6 affected local governmental entity;

7 (2) publishes a prescribed burn notice, which shall include a
8 description of the area to be burned, in a conspicuous manner in at
9 least one newspaper of general circulation in the area of the burn;

10 (3) provides prior written notice, by certified mail ¹, return
11 receipt requested,¹ or personal service, of the proposed prescribed
12 burn to the landowner and lessee, if known, of any land that is
13 included in the area to be prescribed burned, which notice shall be
14 sent at least 30 days prior to the burn unless the Bureau of Forest
15 Fire Management makes a written finding that an emergency exists,
16 in which case the prior written notice shall be sent as soon as
17 possible after the finding is made; ¹[and]¹

18 (4) ¹provides prior written notice by certified mail, return
19 receipt requested, or by personal service, to the landowner or lessee
20 of any land within 250 feet of the area to be burned, of the land to
21 be included in the proposed prescribed burn, the 90-day timeframe
22 in which the proposed prescribed burn will occur, and information
23 regarding how a copy of the approved prescribed burn plan may be
24 obtained, which notice shall be sent at least 30 days prior to the
25 burn; and

26 (5)¹ considers any landowner or lessee objections to the
27 prescribed burning of the property. An objecting landowner or
28 lessee may apply to the Bureau of Forest Fire Management for a
29 review of alternative methods of forest fuel reduction on the
30 property. If the Bureau of Forest Fire Management does not resolve
31 the objection, the bureau shall convene a panel composed of the
32 local New Jersey Bureau of Forest Fire Management Service
33 manager, the fire chief of the jurisdiction, and a local official
34 designated by the municipality in which the land is located, or any
35 of their designees. If the panel's recommendation is not acceptable
36 to the landowner or lessee, the landowner or lessee may request
37 further consideration by the Commissioner of Environmental
38 Protection or the commissioner's designee, and shall thereafter be
39 entitled to an administrative hearing pursuant to the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

41 b. No fees or costs shall be assessed to a landowner or lessee
42 for a prescribed burn conducted by the Bureau of Forest Fire
43 Management as authorized pursuant to this section.

44
45 7. a. The Bureau of Forest Fire Management may enter into a
46 written agreement with a landowner, or a lessee with the
47 landowner's written permission, to conduct a joint prescribed burn
48 or mechanically replicate a burn on the landowner's property. The

1 agreement shall include, but need not be limited to, a prescribed
2 burn plan for the property and a delineation of the respective roles
3 of the New Jersey Bureau of Forest Fire Management personnel, the
4 landowner, the lessee, and the landowner's and lessee's agents and
5 employees in carrying out the prescribed burn.

6 b. If the prescribed burn is conducted by the New Jersey
7 Bureau of Forest Fire Management at the request of a landowner or
8 lessee as authorized pursuant to subsection a. of this section, the
9 New Jersey Bureau of Forest Fire Management may assess the
10 reasonable and normal costs thereof against the landowner or
11 lessee, which shall be payable within 90 days after assessment. If
12 the landowner or lessee does not pay the assessed costs within 90
13 days, the costs may be deemed to be a penalty collectable in a
14 summary proceeding pursuant to the "Penalty Enforcement Law of
15 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

16 c. All costs and penalties paid pursuant to this section shall be
17 credited to a special dedicated account in the General Fund and
18 appropriated to the department to help pay for the administration
19 and operation of its forest fire programs.

20
21 8. a. (1) A prescribed burn conducted in accordance with the
22 requirements of this act, an approved prescribed burn plan, the "Air
23 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
24 and any other applicable State air pollution control law, and the
25 rules and regulations adopted by the Department of Environmental
26 Protection pursuant thereto shall be deemed to be in the public
27 interest and shall not constitute arson, trespass, or a public or
28 private nuisance. The provisions of this paragraph shall also apply
29 to smoke and ash caused by or arising from a prescribed burn.

30 (2) No landowner or lessee, certified prescribed burn manager,
31 or agent or employee thereof who conducts a prescribed burn in
32 accordance with the requirements of this act, an approved
33 prescribed burn plan, the "Air Pollution Control Act (1954),"
34 P.L.1954, c.212 (C.26:2C-1 et seq.) and any other applicable State
35 air pollution control law, and the rules and regulations adopted by
36 the Department of Environmental Protection pursuant thereto shall
37 be liable for any damages or injury caused by fire or resulting
38 smoke or ash unless it is proven that such person or entity was
39 negligent in starting, executing, or controlling the prescribed burn.

40 (3) A landowner, lessee, or certified prescribed burn manager
41 who allows a fire to escape from a prescribed burn and which fire
42 requires intervention by the New Jersey Bureau of Forest Fire
43 Management shall reimburse the bureau for the reasonable and
44 normal costs associated therewith. Any reimbursement of costs
45 paid pursuant to this paragraph shall be credited to a special
46 dedicated account in the General Fund and appropriated to the
47 department to help pay for the administration and operation of its
48 forest fire programs.

1 b. Without affecting any other limitations on liability that may
2 be applicable, and notwithstanding the provisions of any other law,
3 neither the State Firewarden nor any designee, agent, or employee
4 thereof or of the Bureau of Forest Fire Management shall be
5 personally liable for any damages or injury arising from or related
6 to any act or omission of the State Firewarden or any designee,
7 agent, or employee thereof or of the Bureau of Forest Fire
8 Management when acting in an official capacity to carry out the
9 provisions of this act.

10 c. Notwithstanding any State or local law, rule, regulation,
11 ordinance, or resolution to the contrary, a prescribed burn
12 conducted pursuant to this act, any rules and regulations adopted
13 pursuant thereto, and an approved prescribed burn plan shall be
14 deemed to not (1) be a source operation or source of an air
15 contaminant, (2) be or tend to be injurious to human health or
16 welfare, animal or plant life, or property, or (3) unreasonably
17 interfere with the enjoyment of life or property, as those terms are
18 used in the "Air Pollution Control Act (1954)," P.L.1954, c.212
19 (C.26:2C-1 et seq.), and any rules or regulations adopted pursuant
20 thereto, or any similar provision of any municipal or county
21 ordinance, resolution, or regulation. The provisions of this
22 subsection shall also apply to smoke and ash caused by or arising
23 from a prescribed burn.

24
25 9. Within 180 days after the date of enactment of this act, the
26 Department of Environmental Protection, in consultation with the
27 Department of Agriculture, shall develop and adopt, pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), such rules and regulations as may be necessary to implement
30 this act, which shall include, but need not be limited to, rules and
31 regulations implementing the certification program for prescribed
32 burn managers set forth in section 4. of this act and establishing any
33 additional requirements concerning prescribed burns, prescribed
34 burn plans, and the issuance of appropriate notice to the public of
35 prescribed burns performed by the Bureau of Forest Fire
36 Management.

37
38 10. This act shall take effect immediately.